

REMARKS

Claims 2-4, 10, 12, 18-20, 24, and 25 are pending. The numbered paragraphs below correspond to the Examiner's numbered paragraphs in the office action.

1. No response required.

2./3. Claims 3, 18-20, 24 and 25 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Fearnot et al. (U.S. Patent 5,609,629). Fearnot teaches layering of drug(s) and polymer(s). For example, a pure drug layer or bioactive material 18 is deposited under a fibrous mesh layer 20 of parylene for control deliver of the drug. **To be clear with the Examiner, bioactive material 18 is defined as a pure drug – such as the list provided in the last paragraph of column 8.** It is important to note that the polymer and drug of Fearnot are **not blended but are two separate and distinct layers.** Referring to column 9, lines 57 to line 63, Fearnot notes that the **“bioactive material [18] lies under the at least one porous layer 20, rather than being dispersed within or throughout it.”** (emphasis added). In sum, Fearnot specifically states that the polymer layer and the drug layer are not to be blended together.

In contrast, claim 18 requires **“wherein at least one of the substance for the treatment of thrombus formation or the steroidal or non-steroidal anti-inflammatory substance is in a blend form with a polymeric material”**; claim 19 requires **“wherein the drug is in a blend form with a polymeric material”**; claim 24 requires **“wherein the component for reducing or preventing the formation of thrombi is blended in the polymer”**; and claim 25 requires **“wherein the component for reducing or preventing infiltration of macrophages in the thrombi is blended in the polymer.”** More specifically, Fearnot explicitly teaches that any intermixing of the polymer and the drug must be avoided. Accordingly, claims 18, 19, 24 and 25 are patentably allowable over Fearnot. Claims 3 and 20 are dependent claims and are allowable for at least the same reason.

4./5. Claims 10 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fearnot in view of Palasis et al. (U.S. Patent 6,638,259).

Claim 10 recites “wherein at least one of the anti-thrombogenic substance or anti-inflammatory substance is in a blend form with a polymer.” As indicated above, Fearnot not only does not teach this limitation, but in fact explicitly teaches away from any intermixing of the drug and the polymer. Again, to quote Fearnot, “[i]t is for this reason that the bioactive material lies under the at least one porous layer 20, rather than being dispersed within or throughout it.” Palasis does not cure the deficiencies of Fearnot. Assuming, for the sake of argument, that Palasis does teach blending of a drug and polymer, **then the references are not combinable since they teach away from one another.** Applicants respectfully submit that the Examiner simply cannot combine one reference that specifically teaches to one of ordinary skill in the art that blending must be avoided with another reference that teaches the blending of the components. **The case law is very clear that references cannot be combined where the references teach away from their combination.**

Accordingly, claim 10 is allowable over the combination of the references. Claim 26 depends from claim 10 and is allowable for at least the same reason.

6. Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fearnot in view of Okada et al. (U.S. Patent 4,878,907). As indicated above, claim 24 is patentably allowable over Fearnot. Okada does not cure the deficiencies of Fearnot with respect to claim 24. Accordingly, claim 24 is patentable over the combination of the references. Claim 4 depends from claim 24 and is allowable for at least the same reason. Moreover, as indicated above, the case law is very clear that if references teach away from one another, then a *prima facie* case of obviousness cannot be made. Considering that Fearnot specifically teaches away from any blending or combination of the drug and the polymer, Applicants respectfully submit that the Examiner should not maintain this rejection.

7. Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Fearnot in view of Palasis and further in view of Okada. Applicants submit that the arguments above clearly address this rejection as well and that a response to this rejection would simply be repetitive.


8. Claim 20 has been rejected as being anticipated by Fearnot on paragraph 3 of the office action. In paragraph 8, the Examiner has indicated that Fearnot lacks the teaching of polytetrafluoroethylene. In review of the reference, Applicants will assume that an error was made by the Examiner in paragraph 3 of the office action. Regardless, not only does the second reference not cure the deficiencies of Fearnot, but as indicated above, Fearnot teaches away from any blending or intermixing of the polymer with the drug. Accordingly, claim 20, which depends on claim 19, is allowable as well.

Withdrawal of the rejection and allowance of the claims is respectfully requested. If the Examiner has any questions or concerns, the Examiner is invited to call the undersigned attorney of record.

Respectfully submitted,

Date: December 30, 2005

Squire, Sanders & Dempsey L.L.P.
One Maritime Plaza
Suite 300
San Francisco, CA 94111
Facsimile (415) 393-9887
Telephone (415) 954-0323
ckerrigan@ssd.com


Cameron Kerrigan
Attorney for Applicants
Reg. No. 44,826